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Minn. Stat. § 480A.08, subd. 3 (2004).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A05-2528**

M.B.E., Inc., et al.,  
Appellants,

vs.

Minnesota Department of Labor and Industry, et al.,  
Respondents,

Minnesota Construction Conference of Teamsters, intervenor,  
Respondent.

**Filed October 24, 2006  
Affirmed  
Peterson, Judge**

Ramsey County District Court  
File No. C1-05-2410

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Considered and decided by Randall, Presiding Judge; Toussaint, Chief Judge; and  
Peterson, Judge.

## **UNPUBLISHED OPINION**

**PETERSON**, Judge

In this appeal from a summary judgment dismissing appellants' complaint in a declaratory-judgment action challenging the validity of two statutes and the administrative rules adopted to implement and enforce the statutes, appellants argue that the district court erred in ruling that it did not have jurisdiction to consider the declaratory-judgment action. Because the district court did not have original jurisdiction to determine the validity of an administrative rule in a pre-enforcement declaratory-judgment action and appellants failed to show that the statutes have been, or are about to be, applied to their disadvantage, we affirm.

### **FACTS**

Appellants are 16 business firms that provide trucking services for highway-construction projects in Minnesota, including projects that are financed in whole or in part by state funds. A laborer or mechanic who is employed to work on a state highway-construction project "must be paid at least the prevailing wage rate in the same or most similar trade or occupation in the area." Minn. Stat. § 177.44, subd. 1 (2004). The prevailing wage rate includes an "hourly basic rate," which means "the hourly wage paid to any employee," Minn. Stat. § 177.42, subd. 5 (2004), plus "the contribution for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefit paid to the largest number of workers engaged in the same class of labor within the area." Minn. Stat. § 177.42, subd. 6 (2004). For purposes of Minn. Stat. § 177.44 (2004), the

prevailing wage rate includes “rental rates for truck hire paid to those who own and operate the truck.” *Id.*

To implement the requirement that people employed to work on a state highway-construction project be paid the prevailing wage rate, the statute provides that:

The Department of Labor and Industry shall conduct investigations and hold public hearings necessary to define classes of laborers and mechanics and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work, so as to determine prevailing hours of labor, prevailing wage rates, and hourly basic rates of pay.

The department shall determine the nature of the equipment furnished by truck drivers who own and operate trucks on contract work to determine minimum rates for the equipment, and shall establish by rule minimum rates to be computed into the prevailing wage rate.

Minn. Stat. § 177.44, subd. 3 (2004).

Appellants commenced a declaratory-judgment action in the district court against respondents Minnesota Department of Labor and Industry (DOLI), Minnesota Department of Administration (MnAdmin), Minnesota Department of Transportation (MnDOT), and the commissioner of each of these departments. Appellants’ complaint alleges:

23. On December 20, 2004, DOLI certified truck rental rates and operating costs and determined truck broker fees throughout the State of Minnesota.

24. Beginning December 20, 2004, MnAdmin and MnDOT began including the certified truck rental rates and operating costs and determined truck broker fees in advertisements for bids, bid proposals, bid lettings, and contracts for highway construction projects financed in whole or part with state funds.

25. Beginning December 20, 2004, DOLI, MnAdmin, and MnDOT began enforcing the payment of certified truck rental rates and operating costs and determined truck broker fees on highway construction projects financed in whole or part with state funds.

The complaint asserts six claims for declaratory relief and prays for an order declaring (1) Minn. Stat. § 177.42, subd. 6, and Minn. Stat. § 177.44, subd. 3, unconstitutionally vague as they relate to truck-rental rates and truck-broker fees; (2) Minn. R. 5200.1105 and 5200.1106 (2003) unconstitutionally vague as they relate to truck-broker fees; (3) Minn. R. 5200.1105 and 5200.1106 ultra vires of Minn. Stat. §§ 177.41-.44 (2004); (4) the defendant's unpromulgated rulemaking unlawful under Minn. Stat. §§ 14.001-.69 (2004); and (5) the truck-rental rates, operating costs, and truck-broker fees certified or determined by DOLI on December 20, 2004, invalid and unenforceable. The complaint also seeks injunctive relief to prevent the defendants from (1) enforcing Minn. Stat. § 177.42, subd. 6, and Minn. Stat. § 177.44, subd. 3, as they relate to truck-rental rates and truck-broker fees; (2) enforcing Minn. R. 5200.1105 and 5200.1106; (3) engaging in unpromulgated rulemaking; (4) including truck-rental rates, operating costs, and truck-broker fees in advertisements for bids, bid proposals, bid lettings, and contracts; and (5) enforcing truck-rental rates, operating costs, and truck-broker fees.

Respondent Minnesota Construction Conference of Teamsters intervened in the declaratory-judgment action. In April 2005, the district court denied appellants' motion for a temporary restraining order. Respondents filed motions for summary judgment, arguing, among other things, that the district court did not have jurisdiction to consider

challenges to administrative rules because any challenge to rules must be brought in a declaratory-judgment action before this court. The district court granted summary judgment and dismissed appellants' complaint. This appeal followed.

## DECISION

On appeal from a summary judgment, this court examines the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court “must view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). “We review *de novo* the issue of jurisdiction without deference to the lower court.” *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999).

Judicial review of the validity of an administrative rule is governed by Minn. Stat. §§ 14.44-.45 (2004).

The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, and whether or not the agency has commenced an action against the petitioner to enforce the rule.

Minn. Stat. § 14.44.

Appellants acknowledge that Minn. Stat. §§ 14.44-.45 provide a mechanism for a party to challenge a rule before it is enforced against the party. But they argue that “[b]y

including invalidly determined truck rental rates in bid solicitations and contracts, the [respondent departments] effectively applied and enforced the rules against the [appellants] and all other participants in the competitive bidding process, thereby providing [appellants] with an independent claim for violation of the competitive bidding laws.”

Appellants’ allegations demonstrate that their declaratory-judgment action is a pre-enforcement challenge to administrative rules. This court has explained that:

Generally, a declaratory judgment action is a proper method to challenge a rule prior to its application or enforcement. In holding that a declaratory judgment action was proper in a pre-enforcement challenge, the supreme court stated:

This action is a pre-enforcement challenge, i.e., it questions the process by which the rule was made and the rule’s general validity before it is enforced against any particular party. This is to be distinguished from an action wherein the rule is sought to be enforced against a particular party and, in that contested setting, the validity of the rule as applied to a particular party is adjudicated.

*Minn. Educ. Ass’n v. Minn. State Bd. of Educ.*, 499 N.W.2d 846, 848-49 (Minn. App. 1993) (quoting *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984)). Appellants’ express claim is that invalid rules have been applied and enforced against all participants in the competitive-bidding process. Appellants do not identify any attempt to apply or enforce a rule against any particular party. Instead, appellants seek a declaration that applies to all participants in the competitive-bidding process since December 20, 2004. This is a challenge to the general validity of the rules. Therefore,

appellants' declaratory-judgment action is a pre-enforcement challenge, and the district court did not have jurisdiction.

Appellants argue that in order to evaluate their claims that improperly determined rates, costs, and fees were included in bid solicitations, the district court necessarily had to examine the validity of those rates, and precluding the district court from doing so would deprive the district court of its ability to protect the taxpayers against the misuse of their taxes, which would be contrary to the public policy articulated in *Tel. Assocs. v. St. Louis County Bd.*, 364 N.W.2d 378 (Minn. 1985), *NewMech Cos., Inc. v. Indep. Sch. Dist. No. 206*, 509 N.W.2d 579 (Minn. App. 1993), *rev'd on other grounds* 540 N.W.2d 801 (Minn. 1995), and *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226 (Minn. App. 1993), *review denied* (Minn. Apr. 20, 1993). But appellants fail to recognize that in each of those cases, a particular contract was awarded, and an unsuccessful bidder brought suit in the district court to challenge an alleged impropriety in a particular bidding process. Appellants do not explain why that procedure could not be followed if a particular party believes that an impropriety has occurred in the bidding process for a particular highway-construction project.

Appellants' failure to identify any attempt to apply or enforce a rule against any particular party also deprived the district court of jurisdiction to consider their claim that Minn. Stat. §§ 177.42, subd. 6, .44, subd. 3 (2004), are void for vagueness as they relate to truck-rental rates and truck-broker fees. "When the constitutionality of a statute is challenged, the litigant bringing the challenge must, in order to invoke the jurisdiction of the court, be able to show that the statute is, or is about to be, applied to his

disadvantage.” *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 588 (Minn. 1977). Appellants argue that Minn. Stat. § 177.42, subd. 6, and Minn. Stat. § 177.44, subd. 3, “simply do not contain the clarity needed to support any regulatory scheme containing criminal sanctions, let alone the elaborate scheme created by the DOLI in Minnesota Rules parts 5200.1105 and 5200.1106.” But appellants have not shown that they have been, or are about to be, charged for violating either of these statutes or that the statutes have been, or are about to be, applied to appellants’ disadvantage. Appellants allege that they have been, and will be, “forced to bid on, and quote prices for, projects with unlawful prevailing wage requirements” and “forced to pay truck rental rates and operating costs that may not lawfully be imposed.” But these allegations simply state appellants’ interpretations of Minn. Stat. § 177.42, subd. 6, and Minn. Stat. § 177.44, subd. 3. They do not show how the statutes have been applied to appellants’ disadvantage.

Under the standing requirement, a party must show “that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant” and that the injury “fairly can be traced to the challenged action” and “is likely to be redressed by a favorable decision.”

*In re Application of Crown CoCo, Inc.*, 458 N.W.2d 132, 135 (Minn. App. 1990) (quoting *Meadowbrook Women’s Clinic, P.A. v. State of Minn.*, 557 F. Supp. 1172, 1174 (D. Minn. 1983)), *review dismissed* (Minn. Sept. 14, 1990). Appellants’ allegations indicate that appellants believe that the respondent departments are doing something that

appellants believe is illegal, but the allegations do not show that appellants have suffered actual or threatened injury as a result of the conduct.

**Affirmed.**